



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 578

[Docket No. NHTSA-2017-0059]

#### Civil Penalties

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Reconsideration of final rule; request for comments.

**SUMMARY:** NHTSA seeks comment on whether and how to amend the civil penalty rate for violations of Corporate Average Fuel Economy (CAFE) standards. NHTSA initially raised the civil penalty rate for CAFE standard violations for inflation in 2016, but upon further consideration, NHTSA believes that obtaining additional public input on how to proceed with CAFE civil penalties in the future will be helpful. Therefore, NHTSA is issuing this document to seek public comment as it *sua sponte* reconsiders its final rule regarding the appropriate inflationary adjustment for CAFE civil penalties.

**DATES:** Comments: Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See the **SUPPLEMENTARY INFORMATION** section below for more information on submitting comments.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document. Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>. Please see the “Privacy Act” heading below.

You may call the Docket Management Facility at 202-366-9324.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. NHTSA will continue to file relevant information in the Docket as it becomes available.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. Anyone is able to search the electronic form of all comments received into any of DOT’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

**FOR FURTHER INFORMATION CONTACT:** Thomas Healy, Office of the Chief Counsel, NHTSA, telephone (202) 366-2992, facsimile (202) 366-3820, 1200 New Jersey Avenue, SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and regulatory background**

NHTSA sets<sup>1</sup> and enforces<sup>2</sup> CAFE standards for the United States, and in doing so, assesses civil penalties against vehicle manufacturers who fall short of their compliance obligations and are unable to make up the shortfall with credits.<sup>3</sup> The amount of the civil penalty was originally set by statute in 1975, and for most of the duration of the CAFE program, has been \$5.50 per each tenth of a mile per gallon that a manufacturer's fleet average CAFE level falls short of its compliance obligation, multiplied by the number of vehicles in the fleet<sup>4</sup> that has the shortfall. The basic equation for calculating a manufacturer's civil penalty amount is as follows:

(penalty rate, in \$) x (amount of shortfall, in tenths of an mpg) x (# of vehicles in manufacturer's non-compliant fleet) = \$ due as penalty for non-compliant fleet.

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<sup>1</sup> 49 U.S.C. 32902.

<sup>2</sup> 49 U.S.C. 32911, 32912.

<sup>3</sup> Credits may be either *earned* (for over-compliance by a given manufacturer's fleet, in a given model year) or *purchased* (in which case, another manufacturer earned the credits by over-complying and chose to sell that surplus). 49 U.S.C. 32903; 49 CFR part 538.

<sup>4</sup> A manufacturer may have up to three fleets of vehicles, for CAFE compliance purposes, in any given model year – a domestic passenger car fleet, an imported passenger car fleet, and a light truck fleet. Each fleet belonging to each manufacturer has its own compliance obligation, with the potential for either over-compliance or under-compliance. There is no overarching CAFE requirement for a manufacturer's total production.

To date, automakers have paid more than \$890 million in penalties relating to the CAFE standards.<sup>5</sup> Additionally, since the introduction of credit trading and transfers in MY 2011, some manufacturers have turned to acquiring credits from competitors rather than paying civil penalties for non-compliance, and it is likely that this involves significant expenditures. In light of the fact that CAFE standards are set to rise at a significant rate over the next several years, and since NHTSA's *Projected Fuel Economy Performance Report*<sup>6</sup> indicates that many manufacturers are falling behind the standards for model year 2016 and increasingly so for model year 2017, it is likely that many manufacturers will face the possibility of paying larger CAFE penalties over the next several years than at present.

NHTSA has long had authority under the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94-163, section 508, 89 Stat. 912 (1975), to raise the amount of the penalty for CAFE shortfalls if it can make certain findings,<sup>7</sup> as well as the authority to compromise and remit such penalties under certain circumstances.<sup>8</sup> If NHTSA were to raise penalties for CAFE shortfalls, the higher amount would apply to *any* manufacturer who owed them; the authority to compromise and remit penalties, however, is limited and on a case-by-case basis.

For both raising penalties and compromising them under EPCA, NHTSA's burden is considerable. If NHTSA seeks to raise CAFE penalties under EPCA, NHTSA may only do so if it concludes through rulemaking that the increase in the penalty both (1) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed, *and* (2) will not have a substantial deleterious impact on

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<sup>5</sup> The highest CAFE penalty paid to date for a shortfall in a single fleet was \$30,257,920, paid by DaimlerChrysler for its imported passenger car fleet in MY 2006. Since MY 2012, only Jaguar Land Rover and Volvo have paid civil penalties. See [https://one.nhtsa.gov/cafe\\_pic/CAFE\\_PIC\\_Fines\\_LIVE.html](https://one.nhtsa.gov/cafe_pic/CAFE_PIC_Fines_LIVE.html).

<sup>6</sup> Available at

[https://one.nhtsa.gov/CAFE\\_PIC/MY%202016%20and%202017%20Projected%20Fuel%20Economy%20Performance%20Report%20Final.pdf](https://one.nhtsa.gov/CAFE_PIC/MY%202016%20and%202017%20Projected%20Fuel%20Economy%20Performance%20Report%20Final.pdf)

<sup>7</sup> 49 U.S.C. 32912.

<sup>8</sup> 49 U.S.C. 32913.

the economy of the United States, a State, or a region of the State. A finding of “no substantial deleterious impact” may only be made if NHTSA determines that it is likely that the increase in the penalty (A) will not cause a significant increase in unemployment in a State or a region of a State, (B) adversely affect competition, or (C) cause a significant increase in automobile imports. Nowhere does EPCA define “substantial” or “significant” in the context of this provision. The rulemaking process to raise penalties includes specifically soliciting comments from the Federal Trade Commission, among others, and requires a public hearing following a comment period of at least 45 days. NHTSA has never adjusted the CAFE civil penalty using this EPCA provision.

If NHTSA seeks to compromise or remit penalties for a given manufacturer, a rulemaking is not necessary, but the amount of a penalty may be compromised or remitted only to the extent (1) necessary to prevent a manufacturer’s insolvency or bankruptcy, (2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire, or (3) the Federal Trade Commission certifies that a reduction in the penalty is necessary to prevent a substantial lessening of competition. As with raising penalties, NHTSA has never previously attempted to undertake this process.

The Center for Biological Diversity petitioned NHTSA on October 1, 2015, to conduct rulemaking to raise the amount of the penalty to \$10, the maximum possible under EPCA at that time.<sup>9</sup> A month later, while NHTSA was considering that petition, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act),<sup>10</sup> which applied to all civil penalties administered by federal agencies, as discussed in the prior Federal Register documents cited above. OMB guidance directed NHTSA and other federal agencies to follow a specific formula to adjust its civil penalties, pursuant to the Act’s

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<sup>9</sup>A copy of this petition is available in the rulemaking docket.

<sup>10</sup> Pub. L. 114-74, Sec. 701.

requirements, including the penalty for CAFE shortfalls, pursuant to the Inflation Adjustment Act.<sup>11</sup>

On July 5, 2016, NHTSA published an interim final rule, adopting inflation adjustments for penalties under its administration, following the formula in the Act. One of these adjustments included raising the penalty rate for CAFE non-compliance from \$5.50 to \$14.<sup>12</sup> NHTSA also indicated in that document that the new maximum penalty rate that the Secretary is permitted to establish for such violations is \$25.

In response to the changes to the CAFE provisions promulgated in the interim final rule, the Auto Alliance and Global Automakers jointly petitioned NHTSA for reconsideration (the Industry Petition).<sup>13</sup> The Industry Petition raised concerns with retroactivity (applying the penalty increase associated with model years that have already been completed or for which a company's compliance plan had already been "set"); which "base year" NHTSA should use for calculating the adjusted penalty rate; and whether an immediate increase in the penalty rate to \$14 would cause a "negative economic impact."

In response to the Industry Petition, NHTSA issued a final rule published on December 28, 2016.<sup>14</sup> NHTSA agreed that raising the penalty rate for model years already fully complete would be inappropriate, given how courts generally disfavor the retroactive application of statutes. NHTSA also agreed that raising the rate for model years for which product changes were infeasible due to lack of lead time, did not seem consistent with Congress' intent that the

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<sup>11</sup> This OMB guidance is available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf> (last accessed May 22, 2017).

<sup>12</sup> 81 FR 43524 (July 5, 2016). This interim final rule also updated the maximum civil penalty amounts for violations of all statutes and regulations administered by NHTSA, and was not limited solely to penalties administered for CAFE violations.

<sup>13</sup> Jaguar Land Rover North America, LLC also filed a petition for reconsideration in response to the July 5, 2016 interim final rule raising the same concerns as those raised in the Industry Petition. Both petitions can be found in docket listed on this document accessible via [www.regulations.gov](http://www.regulations.gov).

<sup>14</sup> 81 FR 95489 (Dec. 28, 2016).

CAFE program be responsive to consumer demand. NHTSA therefore stated that it would not apply the inflation-adjusted penalty rate of \$14 until model year 2019, as that seemed to be the first year in which product changes could be made in response to the higher penalty rate.

NHTSA further stated that its December final rule responded to the CBD petition for rulemaking. The December 28, 2016 final rule is not yet effective, and, in a separate document published in this Federal Register, NHTSA is delaying the effective date of the rule pending reconsideration to allow for public comment on this issue.<sup>15</sup>

## **II. NHTSA's Reconsideration of Final Rule and Request for Comment on How to Adjust CAFE Civil Penalties**

CAFE penalties are straightforward to administer, but determining the appropriate amount of inflation adjustment is more complicated than originally understood. As CAFE standard stringency continues to increase, the nation's increased abundance of fuel resources has reduced fuel prices and is causing consumers to make purchasing decisions based on factors other than fuel economy, the potential effects of higher penalties for shortfalls may be more widely felt. In fact, NHTSA's data indicates that many automakers are projected to fall behind the standards for model years 2016 and 2017. Moreover, as explained earlier, once NHTSA settles on an amount for CAFE penalties, that becomes the amount applicable to all shortfalls, and NHTSA has no leeway to compromise or remit penalties for manufacturers who feel that their compliance circumstances are dire, unless they are actually facing bankruptcy. The consequences of this decision, therefore, are considerable and fairly permanent. NHTSA is therefore *sua sponte* reconsidering the December 28, 2016 final rule.

The Inflation Adjustment Act provides an exception to give federal agencies the ability to adjust the "catch-up" amount of a civil monetary penalty by less than the required amount. In

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<sup>15</sup> 82 FR 8694 (Jan. 30, 2017); 82 FR 15302 (Mar. 28, 2017); 82 FR 29009 (June 27, 2017).

order to make such an adjustment, the head of the agency must determine through notice and comment rulemaking that either (1) increasing the penalty by the otherwise required amount will have a “negative economic impact,” or (2) the social costs of increasing the penalty by the otherwise required amount outweigh the benefits. The Director of the Office of Management and Budget must agree with either conclusion by an agency before an agency can act upon such a conclusion.<sup>16</sup> The term “negative economic impact” is not defined in the Inflation Adjustment Act, though OMB’s guidance noted that it expected a concurrence that a penalty increase would have a “negative economic impact” to be “rare.”<sup>17</sup>

Additionally, the OMB guidance directed agencies to calculate the initial “catch-up adjustment” based on either the year the penalty was originally established by Congress, or last adjusted (by Congress or by the agency), whichever is later.<sup>18</sup> If NHTSA determined that it was appropriate to use a different base year than the 1975 base year used to calculate the adjustment in the interim final rule, that decision could have a significant impact on the future CAFE penalties level.

After further consideration of these issues, and because the July 5, 2016 interim final rule did not provide an opportunity for interested parties to provide input fully, NHTSA has determined that it should seek public comment on whether and how NHTSA should consider the issues raised above in seeking to implement the Inflation Adjustment Act as it pertains to CAFE penalties.

Both exceptions to the Inflation Adjustment Act require the agency to assess the economic effects of increasing the penalty amount. Relevant, therefore, to both exceptions is information concerning the costs and benefits of increased penalties. In general, the agency

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<sup>16</sup> See Section 701(c), Pub. L. 114-74.

<sup>17</sup> OMB Guidance, at 3.

<sup>18</sup> *Id.*



expects that increasing the level of the CAFE penalty rate will lead to both increased penalties being paid and increased compliance with CAFE standards, which would result in greater fuel savings and other benefits. We request comment on any information related to these costs and benefits, including:

- What would be the aggregate increased cost of applying a higher fine rate? To what extent would this be based on increased fines versus increase compliance?
- What would be the effect on penalty payments of applying a higher fine rate?
- What would be the effect on the average price of passenger cars and light trucks sold in the U.S?
- How much additional fuel would be saved by raising the CAFE penalty rate any amount between \$5.50 per tenth of a mile per gallon and \$14 per tenth of a mile per gallon, and based on current projections of fuel prices, what would be the monetized benefit to consumers, if any, as compared to additional costs to consumers associated with higher penalties?
- What would be the environmental impacts of this fuel savings?
- Are there any other costs or benefits the agency should consider?
- Do commenters have data suggesting whether societal costs outweigh societal benefits?

In acting under the “negative economic impact” exception, two slightly different overarching questions also present themselves: first, whether the “impact” resulting from raising the CAFE penalty rate leads to a “negative economic impact,” and second, whether and how the EPCA requirements in 49 U.S.C. 32912 for what NHTSA must consider in raising CAFE penalty rates under that section interact with NHTSA’s obligations under the Inflation Adjustment Act. NHTSA therefore seeks comment on the following:

- If NHTSA were to consider potential “negative economic impacts” associated with raising the CAFE penalty rate, what impacts, specifically, should NHTSA evaluate, why are those impacts relevant and not others, and what magnitude of impacts should be regarded as constituting “negative economic impacts”?
- Do commenters have information that could be useful to NHTSA in evaluating “negative economic impacts” that they would be willing to provide?
- “Negative economic impact” also potentially requires the agency to consider impacts that are similar to those considered in cost-benefit analysis. For example:
  - If there are increased prices due to increased penalties, what effect may that have on sales, including transfer of sales from new vehicles to used vehicles?
  - If any impact on sales exists, would there be any adverse safety, fuel economy, or environmental impacts if consumers remain in older vehicles, which are less likely to have advanced safety and environmental features, or may be less fuel efficient than new model year vehicles? Would rising prices have a disproportionate impact on rural and disadvantaged communities, including with respect to safety, fuel economy, and environmental benefits?
  - If prices are affected by raising the penalties, would this restrict consumer choice?
  - If the prices of new model year vehicles rise as a result of higher CAFE penalties, would there be an impact on the price of older model year vehicles, and what economic impact might there be as a result?;
  - If increased penalties increase the costs of vehicles, would that lead to any secondary economic impacts on the nation, on a state or group of states, or on a

region within a state or group of states, if as a result consumers spend less money on other desired goods and services?;

- If penalties rise, could that create disincentives for automakers to build certain types of vehicles with lower fuel economy, such as vehicles specially designed to accommodate Americans with disabilities? And if, as a result of higher CAFE penalties, the prices of such vehicles rise or the availability of such vehicles falls, what might be the impact on consumers of such vehicles?
- Do commenters believe that the EPCA considerations for raising CAFE penalty rates under 49 U.S.C. 32912 are relevant to the catch-up adjustment required by the Inflation Adjustment Act? Why or why not?
- Do commenters believe that the EPCA considerations for “substantial deleterious impact” are relevant to a determination of “negative economic impact”? If so, do commenters believe that those considerations *must be* accounted for in determining negative economic impact, or simply that they are informational, and what is the legal basis for that belief?
- If the EPCA considerations are relevant, how should they be applied in this instance?
- Do commenters have data suggesting what levels of “substantial energy conservation,” as envisioned by EPCA, would outweigh any “substantial deleterious impact” of raising penalties? Why or why not?
- Assuming the factors under 32912 are relevant, can commenters provide specific, documented information (including references to the sources relied on) with regard to the following:
  - Would there be any potential effects on employment nationally, on specific states or groups of states, or within regions of a state or groups of states, which could

result from raising the CAFE penalty rate any amount between \$5.50 per tenth of a mile per gallon and \$14 per tenth of a mile per gallon?

- Would rising penalties affect employment on specific sectors of the economy?
- Are there any potential effects on competition within the automotive sector and the market shares of individual automakers that could result from raising the CAFE penalty rate any amount between \$5.50 per tenth of a mile per gallon and \$14 per tenth of a mile per gallon?
- Are there any potential effects on automobile imports that could result from raising the CAFE penalty rate any amount between \$5.50 per tenth of a mile per gallon and \$14 per tenth of a mile per gallon?

Finally, regarding whether NHTSA used the appropriate base year to calculate the adjustment in the interim final rule, should NHTSA instead use the passage of EISA in 2007 as the “base year” for calculating the catch-up adjustment? Do commenters believe that Congress, as a whole, “adjusted” or re-“established” the CAFE penalty amount in EISA within the meaning of the Inflation Adjustment Act when Congress amended the penalty provision? What is the basis for commenters’ belief? That is, could it be argued that Congress, as a whole, explicitly considered and rejected a change to the specific civil penalty dollar amount in the statute (\$5.00) and instead ratified the penalty while at the same time amending the penalty provision to authorize the use of civil penalty revenue to support NHTSA’s CAFE rulemaking and to support research and development of the advanced technology vehicles?<sup>19</sup> Under such an interpretation,

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<sup>19</sup> In a September 16, 2016 letter to NHTSA supplementing their August 1, 2016 petition for reconsideration of the July 5, 2016 interim final rule adjusting the CAFE penalties, the petitioners argued that Congress had considered increasing the CAFE penalty and instead ultimately ratified the existing one. As support for this argument, the petitioners cited a subcommittee discussion draft of June 1, 2007, published in the record of a hearing before the Subcommittee on Energy and Air Quality of the House Committee on Energy and Commerce entitled “Legislative

Congress may have re-“established” the CAFE penalty in 2007, meaning that it could be used as the base year to apply the inflation adjustment multiplier. If so, what would the economic consequences of such a change in base year be?

In the event that NHTSA decides that it should adopt a CAFE civil penalty level other than \$14, how much lead time (in model years) should NHTSA provide to manufacturers to allow them to adjust their production to the new penalty level? What is the factual and legal basis to support such lead time if NHTSA determines to adopt a different penalty level?

### **III. CAFE Penalty During Reconsideration**

Since NHTSA is reconsidering its December 28, 2016 final rule, including whether \$14 per tenth of a mile per gallon is the appropriate inflationary-adjusted penalty level, NHTSA is delaying the effective date of the final rule pending reconsideration in a separate document also published in this Federal Register. During reconsideration, the applicable civil penalty rate is \$5.50 per tenth of a mile per gallon, which was the civil penalty rate prior to NHTSA’s inflationary adjustment. Since \$5.50 is also the penalty rate that applies under the December 28, 2016 final rule until Model Year 2019, NHTSA expects that delaying the final rule pending reconsideration will not affect the actual payment of CAFE penalties that would have otherwise applied prior to Model Year 2019.

NHTSA expects that its inflationary adjustment will provide lead time in advance of assessing a new CAFE penalty level.<sup>20</sup> As NHTSA explained in the December 28, 2016 Federal Register document, absent lead time, increasing the civil penalties for falling short of CAFE standards would not lead to an increase in fuel economy. Most manufacturers could not alter their compliance plans in response to the increase in civil penalties for several model years, and

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Hearing on Discussion Draft Concerning Alternative Fuels, Infrastructure and Vehicles,” June 7, 2007, Serial Number 110-53, available at <https://www.gpo.gov/fdsys/pkg/CHRG-110hrg42440/pdf/CHRG-110hrg42440.pdf>

<sup>20</sup> The appropriate lead time is one of the issues on which NHTSA is seeking public comment.

therefore raising the penalty rate without lead time would seem to impose retroactive punishment without generating any additional fuel savings. Neither of these outcomes seems consistent with Congress' intent either in EPCA or in the Inflation Adjustment Act.

#### **IV. Public Participation**

NHTSA requests comment on all aspects of this document. This section describes how you can participate in this process.

##### *How do I prepare and submit comments?*

To ensure that your comments are correctly filed in the Docket, please include the Docket Number NHTSA-2017-0073 in your comments. Your comments must not be more than 15 pages long.<sup>21</sup> NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.<sup>22</sup> Please note that pursuant to the Data Quality Act, in order for substantive data to be relied on and used by NHTSA, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, NHTSA encourages you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at <https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines>.

##### *Tips for preparing your comments:*

When submitting comments, please remember to:

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<sup>21</sup> See 49 CFR 553.21.

<sup>22</sup> Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the DATES section above.

*How can I be sure that my comments were received?*

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing confidential

business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation.<sup>23</sup>

In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

*Will NHTSA consider late comments?*

NHTSA will consider all comments received before midnight Eastern Standard Time on the comment closing date indicated above under **DATES**. To the extent practicable, NHTSA will also consider comments received after that date. If a comment is received too late for us to practicably consider as part of this action, NHTSA will consider that comment as an informal suggestion for a future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov> and following the online instructions for accessing the dockets. You may also read the materials at the DOT Docket Management Facility by going to the street address given above under **ADDRESSES**.

## **V. Regulatory Notices and Analyses**

### **A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action is limited to seeking comment on an adjustment of a civil

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<sup>23</sup> 49 CFR part 512.



penalty under a statute that NHTSA enforces, and has been determined not to be “significant” under the Department of Transportation’s regulatory policies and procedures and the policies of the Office of Management and Budget. Because this rulemaking seeks comment on the penalty amounts enacted under the IFR and does not change the number of entities that are subject to civil penalties, the impacts are anticipated to be non-significant.

#### **B. Regulatory Flexibility Act**

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments only affect manufacturers of motor vehicles. Low-volume manufacturers can petition NHTSA for an alternate CAFE standard under 49 CFR Part 525, which lessens the impacts of this rulemaking on small businesses by allowing them to avoid liability for potential penalties under 49 CFR 578.6(h)(2). Small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not change as the result of this rule.

#### **C. Executive Order 13132 (Federalism)**

Executive Order 13132 requires NHTSA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes

substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local governments early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this rule applies to motor vehicle manufacturers. Thus, the requirements of Section 6 of the Executive Order do not apply.

#### **D. Unfunded Mandates Reform Act of 1995 (UMRA)**

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because NHTSA does not believe that this rule will necessarily have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

#### **E. Executive Order 12778 (Civil Justice Reform)**

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

#### **F. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, NHTSA states that there are no requirements for information collection associated with this rulemaking action.

## **G. Privacy Act**

Please note that anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

**Jack Danielson,**

*Acting Deputy Administrator.*

**BILLING CODE 4910-59-P**

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